

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.17074 of 2005

Between:

Kalvakota Hanmantha Rao
... Petitioner

And

The Union of India rep. by its Under
Secretary, Ministry of Home Affairs,
Freedom Fighters Division, New Delhi
and another
... Respondents

:: ORDER ::

Counsel for Petitioner: Shri V. Ravi Kiran Rao
Counsel for the Respondents: Shri A. Rajasekhar Reddy,
Assistant Solicitor General of India

June 20, 2007

In this petition filed under Article 226 of the Constitution of India,
the petitioner has prayed for issue of a direction to the respondents to

pay him pension under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the Scheme') in terms of sanction accorded by the Government of India vide letter No.112/9347/82-FF(SZ), dated 11.10.1995.

The petitioner participated in Hyderabad Liberation Struggle during 1947-48. While staying near Chanda Border Camp, Maharashtra State, he took part in the movement launched against the atrocities of the Razaakars of the then Nizam of Hyderabad. In 1982, he applied for grant of pension under the Scheme. After processing his claim, the Government of India vide its letter dated 11.10.1995 sanctioned provisional pension to the petitioner @ Rs.1,000/- per month for the period from 17.12.1992 to 30.9.1994 and Rs.1,500/- from 1.10.1994.

After receiving the aforementioned communication, the petitioner submitted pension papers on 9.3.1996 together with his photographs, specimen signatures, thumb and fingers impressions and date of birth certificate to Pay and Accounts Officer (Pensions and Miscellaneous), New Delhi (respondent No.2 herein).

In the meanwhile, respondent No.2 sent communication No.PAO/P&M/MHA/AP/95-96/5023-24, dated 30.1.1996 to Under Secretary, Freedom Fighters Division, New Delhi with a request to furnish the copy of letter dated 11.10.1995. Another communication to this effect was sent by respondent No.2 on 25.3.1996.

After seven months of the sanction of pension and three and half months of the submission of necessary papers and photographs, Under Secretary to Government of India, Freedom Fighters Division, vide his letter dated 25.6.1996 called upon the petitioner to submit the original sanction order. The latter submitted the required document on 19.7.1996 and obtained acknowledgment in the form of endorsement made by Deputy Secretary, Ministry of Home Affairs. Notwithstanding this, the respondents did not pay pension to the petitioner and this is the reason why he has sought intervention of the

Court.

The petitioner has averred that the failure of the respondents to pay pension to him in accordance with the sanction accorded by the Central Government has resulted in violation of his vested right.

In the counter-affidavit filed by him, Shri J.C. Bain, Under Secretary, Freedom Fighters Division, Ministry of Home Affairs has averred that the papers relating to sanction of pension to the petitioner are not available and, therefore, the respondents are not in a position to take any action in the matter. He has further averred that the State Government has been requested to provide all the papers/documents regarding claim of the petitioner and appropriate action would be taken on receipt of the papers/documents.

I have heard learned counsel for the parties and perused the record. For the sake of convenient reference, sanction letter dated 11.10.1995 and letter dated 25.6.1996 sent to the petitioner by Under Secretary to the Government of India, Ministry of Home Affairs and the endorsement made by Deputy Secretary to the Ministry of Home Affairs acknowledging the receipt of the original sanction letter submitted by the petitioner are reproduced below:

“Letter dated 11.10.1995

No.112/9347/82-FF(SZ)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Lok Nayak Bhavan, New Delhi – 3.

Dt.11-10-1995.

To
PAO (Pension & Misc.),
Ministry of Home Affairs,
Block No.10, Gali No.1 & 2,
Jam Nagar House – New Delhi -11.

Sub: Grant of Pension from Central Revenues to the Freedom Fighters and their families.

...

Sir,

I am directed to convey the sanction of the President to the grant of provisional Pension Rs.1000/- (Rupees one thousand only) w.e.f. 17.12.1992 to 30.9.1994 and Rs.1500/- pm w.e.f. 1-10-1994 onwards to

Kalvakota Hanmantha Rao S/o. Venkateshwar Rao, R/o.Garishagurthy, Mandal Gandhar, Taluk Jagtial, District Karimnagar (Andhra Pradesh).

2. The pension will be for the life-time of the recipient would be in addition to pension if any, sanctioned by the State Government. This sanction will be subject to review by the President. In particular, it is liable to cancellation/modification without any notice if it is found that it was sanctioned on mistaken ground/false information. The Govt. have also the full right to the recovery of the wrongly drawn pension in case the pension is cancelled.

3. Sri Kalvakota Hanmantha Rao in the event of the Freedom Fighter predeceasing her, the latter will be entitled to a family pension of Rs.1000/- (Rupees one thousand only) per month, which may be paid to him from the date of following the death of the pensioner during his life-time.

4. The expenditure involved will be debitable to the major Head "2235-S-2-other social security and welfare programme 2 (1) Swatantrata Sainik Samman Pension Scheme in Demand No.45-other expenditure of the Ministry of Home Affairs for the financial year 1993-94. Necessary funds will be provided in your circle of account by re-appropriation in due course.

The following documents received from the applicant are sent herewith in triplicate:

1. Photograph;
2. Impression of thumb and four finger of left hand;
3. Descriptive roll i.e. identification marks;
4. Affidavit on non-judicial stamp paper about his status as a widow of Freedom Fighter indicating date of birth and educational qualification;
5. Name of nationalized public sector bank and bank account No. (with full signature and date).
6. Specimen signature.

It is requested that immediate arrangements kindly be made for the payment of pension and pension payment order issued to his/him.

This issued under the powers delegated to this Ministry.

Yours faithfully,

Sd/- S.K.JAIN

Under Secretary to
the Govt. of India.

Letter dated 25.6.1996.

No.112/416/83-FF.SZ
Government of India,
Ministry of Home Affairs,
New Delhi – 3.

25 June, 1996

To
Shri Kalvakota Hanmantha Rao,

S/o.Venkateswara Rao,
R/o.Garishakurthi, Via: Gandhara,
Karimnagar, Andhra Pradesh.

Sub: Grant of Swatantrata Samman Sainik Pension to the
Freedom Fighters and their families.

...

Sir,

With reference to your letter dated 16.5.1996 on the above subject, I am directed to request you to furnish the original of the sanction letter dated 11.10.1995 to enable this Ministry to link up the connected papers and issue suitable instructions to the Pay & Accounts Office.

Yours faithfully,
Sd/- N.K. Jha
For Under Secretary
to the Govt. of India

Endorsement of Deputy Secretary, Ministry of Home Affairs, New Delhi

ORIGINAL RECEIVED
Sd/- 19-7-96.
O.P. Sharma,
Dy. Secretary,
Ministry of Home Affairs."

A reading of the above documents leaves no manner of doubt that the Government of India had sanctioned pension to the petitioner as early as in 1995. The original sanction letter was submitted by the petitioner to the concerned authority on 19.7.1996. Notwithstanding this, he has not been paid pension. Learned counsel for the respondents could not offer any explanation for non-payment of the amount due to the petitioner in terms of the sanction accorded by the Government of India. It is, therefore, reasonable to conclude that the respondents have arbitrarily withheld the pension payable to the petitioner in terms of the sanction accorded by the Government of India.

For the reason stated above, the writ petition is allowed. The respondents are directed to release pension to the petitioner in terms of sanction accorded by the Government of India vide letter dated

11.10.1995. The needful be done within a period of four months from the date of receipt of a copy of this order.

G.S. SINGHVI, CJ

June 20, 2007

SVS